

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

ROGER DALE CAMPBELL, JR.
ADC #78423

PLAINTIFF

V.

4:06CV01586 WRW/JTR

RON CHISM, Program Director,
Therapeutic Community, Wrightsville Unit,
Arkansas Department of Correction, et al.

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge William R. Wilson, Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the United States District Judge, you must, at the same time that you file your written objections, include a "Statement of Necessity" that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the Magistrate Judge.
3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite 402
Little Rock, AR 72201-3325

I. Discussion

On October 18, 2006, Plaintiff, who is currently incarcerated at the Ouachita River Correctional Unit of the Arkansas Department of Correction (“ADC”), filed a *pro se* § 1983 Complaint alleging that Defendants violated his constitutional rights. *See Campbell v. Chism*, 4:06CV001538 JMM/HDY, docket entry #2. On October 23, 2006, the Court entered an Order directing Plaintiff to file an Amended Complaint within thirty days. *Id.*, docket entry #2.

On November 1, 2006, Plaintiff filed a pleading entitled “Complaint” and a Motion for Appointment of Counsel. The Clerk’s Office mistakenly construed those pleadings as commencing a new § 1983 action. Accordingly, it opened this new § 1983 action, *Campbell v. Chism*, 4:06CV001586 WRW/JTR, and filed those two pleadings as a Complaint and a Motion for Appointment of Counsel. *See* docket entries #1 and #2. To correct that error, this second § 1983

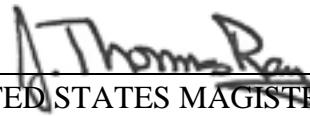
action (4:06CV001586 WRW/JTR) should be closed, and the pleadings transferred to the first § 1983 action (4:06CV001538 JMM/HDY).

II. Conclusion

IT IS THEREFORE RECOMMENDED THAT:

1. The Complaint filed in this action (4:06CV001586 WRW/JTR, docket entry #1) be DISMISSED, WITH PREJUDICE.
2. The Motion for Appointment of Counsel filed in this action (4:06CV001586 WRW/JTR, docket entry #2) be DISMISSED, AS MOOT.
3. The Clerk be directed to file a copy of the Complaint in this action (4:06CV001586 WRW/JTR, docket entry #1) as Plaintiff's Amended Complaint in 4:06CV001538 JMM/HDY.
4. The Clerk be directed to file a copy of the Motion for Appointment of Counsel in this action (4:06CV001586 WRW/JTR, docket entry #2) as a Motion for Appointment of Counsel in 4:06CV001538 JMM/HDY.
5. The Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from any Order and Judgment adopting this Recommended Disposition would not be taken in good faith.

Dated this 8th day of November, 2006.



UNITED STATES MAGISTRATE JUDGE